

## Members

Sen. Brent Steele, Chairperson  
Sen. Richard Bray  
Sen. Lindel Hume  
Sen. James Arnold  
Rep. Linda Lawson  
Rep. Sheila Klinker  
Rep. Ralph Foley  
Rep. Bruce Borders  
Ed G. Buss  
Steve Johnson  
Hon. Randall T. Shepard  
Larry Landis  
Neil Moore  
R. Todd McCormack  
Sheila Hudson  
Hon. Frances Gull  
Hon. James Humphrey  
Hon. Roger Duvall  
Hon. Lynn Murray  
Dr. Stephen Ross



# SENTENCING POLICY STUDY COMMITTEE

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Committee

Authority: P.L. 216-2007

## MEETING MINUTES<sup>1</sup>

Meeting Date: October 1, 2009  
Meeting Time: 1:30 P.M.  
Meeting Place: State House, 200 W. Washington St., Senate  
Chambers  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Sen. Brent Steele, Chairperson; Sen. Lindel Hume; Sen. James Arnold; Rep. Sheila Klinker; Rep. Ralph Foley; Rep. Bruce Borders; Ed G. Buss; Steve Johnson; Hon. Randall T. Shepard; Larry Landis; Neil Moore; R. Todd McCormack; Sheila Hudson; Hon. James Humphrey; Hon. Roger Duvall; Hon. Lynn Murray; Dr. Stephen Ross.

**Members Absent:** Sen. Richard Bray; Rep. Linda Lawson; Hon. Frances Gull.

Sen. Steele called the meeting to order at 1:35 p.m.

Sen. Steele called agenda item #3, the expunging of the criminal record of a person who has been exonerated and recognized Rep. Tinchner to introduce the topic.

**Rep. Tinchner** explained that although legislators have introduced bills in past sessions that would permit expungement of certain convictions, he only proposes expunging the record of a person who has been wrongfully convicted. Rep Tinchner referenced the case of a Mr. David Scott. Mr. Scott was recently released after being proven by DNA evidence to have not committed the murder for which he has served 23 years in prison. Mr. Scott was arrested at the age of 16 after falsely confessing to burglary and murder in a conversation with an FBI informant. After he was proven to have not committed the crime, Mr. Scott was released from prison, but the murder remains on his criminal record. Rep. Tinchner would like to change the

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be obtained electronically by requesting copies at [licrequests@iga.in.gov](mailto:licrequests@iga.in.gov). Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

law so that the conviction would be removed from the record of individuals in a situation like Mr. Scott's.

Currently, five states have expungement mechanisms in their laws. In Tennessee, the governor can expunge a person's record, but Rep Tincher suggested that Indiana's be modeled after Rhode Island's or Wyoming's laws where a judge has the power to expunge. He also indicated that 21 states have laws that allow wrongfully convicted offenders to be compensated for their time in prison. Rep. Tincher asserted that there should be a way to have reasonable compensation for someone who went to prison at 17 and was released at 40. He concluded his remarks by saying that Indiana should pass a law to expunge or at least seal the convictions of those who were wrongfully convicted of a crime and that there should be a way to compensate these individuals.

Sen. Steele suggested that if Indiana were to pass a compensation law, payments could be made in stages since persons recently released from prison may have trouble managing a lump sum settlement. Rep Tincher agreed that would be helpful and noted that Texas has such a system.

Rep. Foley asked if this bill had been presented before. Rep Tincher said that this bill would be much more limited in nature, only applying to those who had been wrongfully convicted. They agreed that there was a need for law enforcement to see the record of the conviction even if the public cannot see it. They also agreed that judicial oversight on a case-by-case basis is preferable to an automatic trigger for expunging records.

**Marshal Shackelford** of MOVE testified that he was convicted of a felony in 1984 and has had a clean record ever since he served four years in prison. He stated that ex-offenders who are trying to reenter society face difficulties in securing apartments and jobs. He stated that many employers will not hire ex-offenders because of insurance liabilities and that his company, Mays Chemical, has an excellent record of working with ex-offenders.

Rep Borders stated that, in his experience in the insurance industry, he has never seen an insurance application ask about the criminal history of a company's employees. He and Mr. Shackelford agreed that this is likely based more in perception than in fact.

**Mr. Will Frankel, Attorney at Law**, represents Mr. Scott and stated that Mr. Scott has maintained during his 23 years in prison that he was innocent. Although he has been released from prison, Mr. Scott still faces difficulty finding a job because of his criminal history. Mr. Frankel stated that officers with the Indiana State Police performed DNA analysis; they were as convinced of Mr. Scott's innocence as they once were of his guilt. Once the State Police completed the testing, Mr. Scott and the prosecutor filed a petition under 35-38-7 (Post Conviction DNA testing). Mr. Scott was released from prison with an apology from the court. Mr. Frankel wonders what can be done to clear the record and salvage the life of a man who has lost 23 years of his life. He understands that Mr. Scott's release means that those in the criminal justice system must admit that they made a mistake and face embarrassment.

Mr. McCormack asked if Mr. Frankel was seeking the expungement of the conviction or compensation from the state. He also asked if there were any other legal remedies available for someone in Mr. Scott's situation. Mr. Frankel replied that while compensation would be good as an eventual solution, he first thinks that it is important to give people the opportunity to have a life. He suggested either expunging the record or vacating the judgment. He knows of no other legal recourse to take. Mr. Koester stated that there are expungement procedures in statute already. Mr. Frankel responded that arrest records can be expunged, but not convictions.

Sen. Steele asked if the order issued by the court to release David Scott mentioned the

wrongful conviction. The order simply ordered the release of Mr. Scott and did not speak to the issue of his innocence. Sen. Steele questioned Mr. Frankel whether, in the future, few if any offenders could claim wrongful imprisonment due to the availability of DNA testing. Mr. Frankel stated that while DNA may be able to exonerate many now, in the future, other tests may become available that would help others. He did not know if DNA testing is used in all cases.

**Mr. Bill Olah, Attorney at law**, is a law partner with Mr. Frankel. He stated that the committee members need to remember that there is a need for a change in the law and that it may not be expungement, but that a person against whom there is not enough evidence to keep in prison should not be considered a convicted felon. There should be a trigger to vacate a conviction and that a person should be allowed to get a job and vote. He should not live life with the scarlet letter of a felony conviction.

**Ms. Carlette Duffy** spoke about her struggles as an ex-offender. She was convicted of felony conspiracy to deal. She believes that it is important to put a face with the title of felon. She spoke about how since her release in 1998 she supports her family and owns a home, but she still has problems getting jobs. She noted that there is a perception that hiring convicted felons will impact insurance premiums.

Dr. Ross asked how this bill would affect her since she was not found to be innocent. She believes that the bill should be expanded to help those who have turned their lives around since their convictions.

**Mr. Larry Landis** of the Public Defenders Council stated that Indiana has one of the most restrictive expungement laws in the country. He and Steve Johnson of the Prosecuting Attorneys Council have worked on a proposal that would set up two databases of criminal histories. One would be available for the public and would contain no record of expunged convictions, and the other would be available to law enforcement and would contain the complete record. The case for making a law to expunge the record of those who did not commit the crime is much easier to make than for those who committed the crime. He pointed out that the four main causes of overturned convictions are coerced confessions, bad eyewitness identifications, jailhouse snitches, and bad science. He said that because of the fact that there are multiple reasons for bad convictions, DNA testing is not the ultimate solution. Indiana does not have a compensation system for those who are wrongfully convicted. It is possible, but it requires a special act of the legislature. There is no way to give people their lives back after they have been in jail for a crime they did not commit, but it is fair to help them rebuild.

**Mr. Steve Johnson** of the Prosecuting Attorneys Council answered a question by a Mr. Rozzell regarding Class D felonies that were downgraded to Class A misdemeanors and how that is reflected in that person's record. He said that the Prosecuting Attorneys Council is working on getting the records to reflect only the misdemeanor and that they are working with the Indiana State Police on this. He would like to see the record sealed. Sen. Steele and others raised concerns about job applications that asked if a person had been convicted of a felony. Mr. Johnson stated that the applicant with a criminal conviction would technically have to answer yes even if they had the felony removed from their record.

Judge Duvall suggested that if the committee was serious about this issue, perhaps they could mandate language for job applications to address this. Sen. Steele suggested that the application could be written to state that a person could mark "no" if they had the conviction removed or sealed on their record. Sen. Steele noted that no one was present to testify on the issue of the discharge of long-term inmates.

Sen. Steele called Sen. Head to introduce agenda item five, child solicitation, habitual offenders, interference with custody, and nonsupport of a dependent.

Sen. Head introduced what was SB 48 – 2009 regarding predators who use the internet for the purposes of child solicitation. Sen. Head indicated that sexual predators find soliciting on the internet chat rooms to be easy, and law enforcement agencies find it difficult to catch them. This law would make it a Class B felony if the communication involved an overt act to meet the child if the offender is over 18 and the child under 14. The officers that attempt to catch these predators go online with fake identities of young girls and boys to draw out the predators. This is a different crime than attempted child molesting, and it must include an overt act of trying to meet the child.

**Detective Cindy Marion**, West Lafayette Police Department, described her undercover work investigating online child solicitation. She stated that she had no doubt that the people who she arrested would molest if she had not caught them.

**Sgt. Scott McCoy**, Lafayette Police Department, described his similar experience investigating online child solicitation. He said that he believes his job is proactive enforcement that will stop molesters before they molest someone else. Rep. Foley asked the detectives if the offenders that they caught were first-time offenders. Both detectives agreed that, although they say that this is the first time, most of these offenders have had previous attempts or encounters.

Mr. Landis raised the question of proportionality to Sen. Head by noting that child solicitation is a Class D felony, but that if a computer was used, it would be more serious. Sen. Head felt that a break should not be given to those who are caught before they make contact with a child.

Sen. Head described the contents of SB 276 – 2009, which deals with the filing of a habitual offender sentencing enhancement. Current law requires the filing to occur within 10 days after the omnibus hearing. Sen. Head stated that if the defendant has convictions in another state, it can take longer than 10 days to get information from the other states to make this charge. By permitting this petition to be filed at any time before trial, the prosecuting attorney would be able to determine whether the defendant has an prior convictions.

Sen. Head explained his proposal for enhancing the sentencing for nonsupport of a dependant. Under current law, a person who is found guilty of nonsupport of a dependant with over \$15,000 in unpaid support commits a Class C felony. Sen. Head wishes to enhance it to a Class B felony for a second offense of nonsupport. He believes that some noncustodial parents willfully deprive their children of support and that an enhanced penalty could deter such behavior. Mr. Landis questioned the public value of this law as the offenders are deliberately not supporting their dependants and had not learned their lesson the first time in prison. Sen. Head feels that it is good public policy to have a harsher punishment for a second offense.

Sen. Head explained his final proposal of dealing with the interference with the custody of a child. He explained that he was interested in making it a Class D felony for a person to take, detain, and conceal a child outside of their custody agreement for over 180 days, explaining that this is beyond keeping a child for a few extra hours or over a holiday weekend, but a prolonged overt act. This could be downgraded by a court to an A misdemeanor if deemed appropriate.

Sen. Steele recognized Dr. Neil Moore of the Criminal Justice Institute to address agenda item #6, the payment of claims from the Victims Compensation Fund.

**Dr. Neil Moore**, Executive Director of the Indiana Criminal Justice Institute (ICJI), gave a progress update on the work of ICJI in reducing the backlog of compensation claims. His prepared remarks can be found in Attachment A.

Rep. Klinker questioned Dr. Moore about the time line in which bills are paid, especially for victims of domestic violence. Bills for violent crime compensation are paid in approximately three years, down from a six-year wait in 2007. Claims made for sex crime compensation are currently paid within three months and are paid directly to the provider.

Dr. Moore stated that claims are immediately reviewed and are screened for the victim's net worth or whether the victim cooperated with the police. Then, the total claim is capped at \$15,000, and any reimbursements from insurance or charities are deducted from that cap. Mr. Jeremy Davis, an audience member, asked how other states can pay in just weeks while Indiana takes years. Dr. Moore responded that several states have laws that do not make them the payer of last resort, like Indiana's violent crimes compensation statute. Also, many states have a higher cap on compensation. Finally, some states have recovery agents who pursue overpayments.

Mr. Landis asked what the goal for payment turnaround is and when ICJI might achieve that goal. Dr. Moore said that the goal is three months for sex crimes and eight months for violent crime claims. ICJI has been given staff and that with technological upgrades the turnaround goal on violent crimes could be met by the end of 2010. The current practice of ICJI is to pay all of the sex crime claims as soon as money is available at the beginning of the state fiscal year in order to maximize the fund paid out before the end of the federal fiscal year. This enables ICJI to maximize the amount of funding they get from the federal government. It also, however, means that they can deplete victim compensation funds before the end of the state fiscal year.

Rep. Foley asked how ICJI received funding. Bill Lantz, CFO of ICJI, stated that for sex crime compensation, most of the money comes from a state appropriation and small amounts from other sources, including an insignificant amount from punitive damages. For violent crime compensation the funds come from a federal grant. Mr. Landis asked how much the state appropriation was for the sex crime compensation, if that was enough, and if ICJI should request more. The state appropriation is approximately \$2.1 million. Dr. Moore said that ICJI will ask for more money in the next biennium. Mr. Lantz said that ICJI spends all of that, but sometimes the budget agency will give extra money, if available, from other funding sources.

**Ms. Anita Carpenter**, CEO, Indiana Coalition Against Sexual Assault, presented prepared remarks found on attachment B. Rep. Borders asked whether Ms. Carpenter thought the committee should recommend changing payment procedures, changing the law, increase funding, or all above. Ms. Carpenter and Rep. Klinker agreed that the answer was all of the above. Rep. Klinker recommended that Ms. Carpenter's group lobby the Ways and Means Committee.

**Ms. Laura Berry**, Executive Director, Indiana Coalition Against Domestic Violence, presented prepared remarks found on attachment C. Mr. Landis asked what she felt the committee could do to improve the system. Ms. Berry felt that changing the cap on payment and the payer of last resort policy would be a big help. She also wants changes in policy and procedures.

Rep. Borders asked Ms. Berry if the state's system was like an insurance policy. There is a similar \$100 out-of-pocket minimum, but the \$15,000 cap that subtracts any contributions is different. Ms. Berry recounted some specific examples of victims whose bills were very large and, although they had insurance, after insurance paid over the \$15,000 cap, they still had very large bills. Rep. Borders indicated that most insurance policies should cover large claims.

Sen. Steele shared an anecdote about a friend who received a ticket for speeding that was not in violation of state law, but was a result of a local ordinance. He noted that these tickets may not be reported to the BMV and insurance companies. Also, the state could be losing revenue by the fines on these tickets going to local governments instead of the state. Mr. Johnson said

that cities and towns will reduce the speed limit on a stretch of road so they can enact an ordinance and divert the revenue collected from infraction judgments that would be deposited into the state general fund and deposit the money into general fund of the municipality. Mr. Landis stated that city and town courts are generating quite a bit of money by doing this. Sen. Steele will address this issue at a future committee meeting. He feels as though closing this loophole is good public policy.

There being no further business, the meeting was adjourned at 4:30 p.m.

Attachment A) Presentation by Neil Moore, Executive Director of the Criminal Justice Institute

1. ICJI has been tasked with administering the Victims Crime Fund for violent and sex crimes
2. Since 2005 the Violent Crime backlog has been reduced from 6 years to 3 years with a goal of payment within 1 year after application.
3. Sex Crime claims are now being paid within 3 months of application consistent with our goal
4. Violent Crime : applications filed with ICJI in the aftermath of crimes causing serious bodily injury or death; or
5. Sex Crime: applications filed by medical providers who perform forensic examinations.
6. Violent Crime:
  - a. Application is submitted by the victim or other qualified party
  - b. Claims are paid from federal VOCA grants
  - c. ICJI is the payer of last resort on the violent crime claims
  - d. 8 out of 10 violent crime payments are made to providers not to the actual victims
  - e. Statutory requirements regarding eligibility and payments from other sources (i.e., insurance) must be verified before the payment can be made on a claim from the fund.
7. Sex Crime:
  - a. Application is submitted by the medical provider who performs the forensic examination
  - b. These claims are paid from a percentage of court fees, work release money, restitution, 75% of punitive damage awards and state appropriations
  - c. ICJI is the primary payer of the sex crime claims
8. Although progress has been made in the timeliness of violent crime claim payments, it is not nearly good enough, and Governor Daniels made it clear that we must do better and we must move quickly toward our goals
9. Crowe Chizek study done in 2007 to help develop a blueprint for progress
10. New technology is being put in place to transition from a paper driven system to an electronic database.
11. Phase 1 of the new system database was just completed and full implementation is expected by end of 2010.
12. Additional staff have been put in place to work through the claims while the new system is being implemented
13. Goal is to pay violent crimes claims within 1 year of application and sex crimes within 3 months from application
14. Legislative changes became effective July 1, 2009 that will alleviate barriers to timely payment

Attachment B) Presentation by Anita Carpenter CEO Indiana Coalition Against Sexual Assault

\* My focus is on Sex Crimes Compensation

\* New administration (ICJI) has been diligent in working to resolve problems, address backlogs, and implement new policies to comply with VAWA. Communication has been open. They have worked to weed out unrelated medical charges from bills and are complying with the 180 day decision rule.

\* We do have challenges

- anonymous reporting options may increase victims of sexual assault coming forward for forensic evidence collection

- providers billing for victims from July 2009 forward will experience delays in payments since there is no more money until next July

- potential impact on stand alone programs such as Ft Wayne Sexual Assault Treatment Center and Madison Clinic who are 80% + dependent upon these dollars to keep their doors open.

- for the victims experiencing problems with compensation we (INCASA and service providers) work well with ICJI to get out the information and stay current but 43 counties have no advocacy services for victims of sexual assault presenting a big challenge.

Basically we have a problem with not having enough funding to cover the claims from violent crimes including sex crimes. More funding from the state would in turn pay more claims and in turn bring in more dollars from the federal government. More funding would allow ICJI to continue to improve data collection, systems analysis and work to streamline the process even more.

We commend ICJI for the work that has been accomplished so far and look to the way ahead for more improvements.

Attachment C) Presentation by Laura Berry-Berman Executive Director Indiana Coalition Against Domestic Violence

We as service providers are obligated to assist victims in completing VCCF forms, but we discourage because of length in payment or denial. The delay and denial results in victim's bills being turned over to bill collectors, must file bankruptcy, and lose jobs and property. There needs to be a time frame by which ICJI must review and process applications, just like there is for Sex Crime Comp Fund.

Difficult application process: The application process is very outdated and arduous, needs to be streamlined through new technology, web-based application process and new policies established about what "must be" provided with the application verses what would "be nice" to have. In addition, ICJI needs to establish effective communication methods and collaboration with victim service providers to assist with the process and keep them informed of pending applications.

Restrictiveness and Disparity of Funds: VCCF has a limit of \$15,000 reimbursement amount (payer of last resort) and any other funds received such as insurance, donations, workers comp, etc. must be deducted from the \$15,000; however, many violent crime victims expenses exceed the amount covered by any of these other sources and they should be eligible to apply for the funds.